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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Case No. 3:17-cv-00730-LRH-WGC

Plaintiff,

ORDER

v.

KREE, LLC,

Defendant.

In *Berezovsky v. Moniz*, the Ninth Circuit held that the federal foreclosure bar in 12 U.S.C. § 4617(j)(3) preempts Nevada law from permitting the nonconsensual foreclosure of Federal Housing Finance Agency (“Agency”) assets. 869 F.3d 923, 930–31 (9th Cir. 2017). Plaintiff Federal National Mortgage Association (“Fannie Mae”) moves for summary judgment in this nonjudicial foreclosure matter under the *Berezovsky* holding. ECF No. 11. Defendant Kree, LLC (“Kree”) opposed the motion, and Fannie Mae replied. ECF Nos. 14, 15.

Under *Berezovsky*, Fannie Mae’s interest in the at-issue property cannot be extinguished by a nonjudicial foreclosure without consent from the Agency. Because no such consent was given, the court grants Fannie Mae’s motion for summary judgment.

**I. BACKGROUND**

In 2007, Richard and Guadalupe Geer obtained a loan from IndyMac Bank, FSB to purchase property located at 5949 Quintessa Court, Sparks, Nevada 89436. ECF No. 11,

1 Ex. 1.<sup>1</sup> The Geers then executed a deed of trust to secure the loan. *Id.* The deed of trust  
2 designated IndyMac Bank as the lender, First American Title Insurance Company as the trustee,  
3 and Mortgage Electronic Registration, Inc. (“MERS”) as the beneficiary under the deed of trust  
4 solely as nominee for the lender and its successors and assigns. *Id.* Fannie Mae acquired the loan  
5 and became the beneficiary under the deed of trust by way of multiple assignments. ECF No. 11,  
6 Exs. 3–4.

7 In March 2016, a deed in foreclosure of assessment lien was recorded against the  
8 property. ECF No. 11, Ex. 5. The foreclosure deed indicates that Kree purchased the property at  
9 a nonjudicial foreclosure in December 2015. *Id.*

10 Fannie Mae asserts that the nonjudicial foreclosure could not extinguish the first deed of  
11 trust on the property because the Agency did not consent to the foreclosure. *See* ECF No. 1. It  
12 sued Kree in December 2017, alleging six causes of action: (1) declaratory relief under the  
13 federal foreclosure bar; (2) quiet title under the federal foreclosure bar; (3) declaratory relief  
14 under the Fifth and Fourteenth Amendments to the United States Constitution; (4) quiet title  
15 under Fifth and Fourteenth Amendments to the United States Constitution; (5) declaratory relief  
16 for an inequitable foreclosure sale; and, (6) quiet title for an inequitable foreclosure sale. *Id.* It  
17 now moves for summary judgment on the claims related to the federal foreclosure bar. ECF No.  
18 11.

## 19 **II. LEGAL STANDARD**

20 Summary judgment is appropriate only when the pleadings, depositions, answers to  
21 interrogatories, affidavits or declarations, stipulations, admissions, and other materials in the  
22 record show that “there is no genuine issue as to any material fact and the movant is entitled to  
23 judgment as a matter of law.” Fed. R. Civ. P. 56(a). In assessing a motion for summary  
24 judgment, the evidence, together with all inferences that can reasonably be drawn therefrom,  
25 must be read in the light most favorable to the party opposing the motion. *Matsushita Elec.*

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27 <sup>1</sup> The court takes judicial notice of the publicly-recorded documents attached to and cited in the parties’  
28 papers. *See Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir.  
2004) (stating matters of public record may be judicially noticed unless the matter is a fact in reasonable  
dispute).

1 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *County of Tuolumne v. Sonora*  
2 *Cnty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001).

3 The moving party bears the initial burden of informing the court of the basis for its  
4 motion, along with evidence showing the absence of any genuine issue of material fact. *Celotex*  
5 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of  
6 proof, the moving party must make a showing that is “sufficient for the court to hold that no  
7 reasonable trier of fact could find other than for the moving party.” *Calderone v. United States*,  
8 799 F.2d 254, 259 (6th Cir. 1986); *see also Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129,  
9 1141 (C.D. Cal. 2001).

10 To successfully rebut a motion for summary judgment, the nonmoving party must point  
11 to facts supported by the record which demonstrate a genuine issue of material fact. *Reese v.*  
12 *Jefferson Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A “material fact” is a fact “that might  
13 affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477  
14 U.S. 242, 248 (1986). Where reasonable minds could differ on the material facts at issue,  
15 summary judgment is not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A  
16 dispute regarding a material fact is considered genuine “if the evidence is such that a reasonable  
17 jury could return a verdict for the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. The mere  
18 existence of a scintilla of evidence in support of the party's position is insufficient to establish a  
19 genuine dispute; there must be evidence on which a jury could reasonably find for the  
20 party. *See id.* at 252.

### 21 **III. DISCUSSION**

22 The court must address three issues to resolve the motion for summary judgment. It first  
23 determines if the applicable statutes of limitations bars Fannie Mae’s claims. The court then  
24 considers if the doctrine of laches bars Fannie Mae’s claims. The court finally decides if the  
25 federal foreclosure bar preempts Nevada law from allowing a nonjudicial foreclosure to  
26 extinguish Fannie Mae’s interest in the at-issue property without consent.

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1           **A. The Statutes of Limitations**

2           To begin, the court turns to the applicable statutes of limitations. Two of Fannie Mae's  
3 claims rely on the federal foreclosure bar: claim one (declaratory relief) and claim two (quiet  
4 title). Kree argues that the claims fall under the two-year statute of limitations in NRS §  
5 11.190(4)(b) because the matter involves a forfeiture under a state statute. ECF No. 14 at 4. The  
6 court disagrees.

7           Fannie Mae brings its two claims for a single purpose: to obtain an order declaring that its  
8 interest in the at-issue property survived the nonjudicial foreclosure. The purpose of Fannie  
9 Mae's claims therefore aligns with the purpose of a quiet-title claim. Nevada law imposes a five-  
10 year statute of limitations on quiet-title claims. NRS §§ 11.070–11.080; *Weeping Hollow Ave.*  
11 *Tr. v. Spencer*, 831 F.3d 1110, 1114 (9th Cir. 2016) (citing NRS § 11.070 as imposing a five-  
12 year statute of limitations on a claim to quiet title in Nevada). Fannie Mae brought its claims  
13 within five years of the foreclosure sale, meaning its claims are timely.

14           **B. The Doctrine of Laches**

15           The court next turns to Kree's arguments under the doctrine of laches. Kree argues that  
16 the doctrine of laches bars Fannie Mae's equitable claims because Fannie Mae delayed filing suit  
17 until two years after the foreclosure sale occurred. ECF No. 14 at 3. Kree further argues that it  
18 changed its position during the delay by financing the maintenance of the property. *Id.* at 4.

19           "The affirmative defense of laches requires proof of (1) lack of diligence by the party  
20 against whom the defense is asserted, and (2) prejudice to the party asserting the defense." *In re*  
21 *Beaty*, 306 F.3d 914, 926 (9th Cir. 2002). "[A] laches determination is made with reference to  
22 the limitations period for the analogous action at law. If the plaintiff filed suit within the  
23 analogous limitations period, the strong presumption is that laches is inapplicable." *Jarrow*  
24 *Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 835 (9th Cir. 2002).

25           Kree fails to overcome the strong presumption that laches is inapplicable since Fannie  
26 Mae filed its suit within the applicable five-year statute of limitations. Fannie Mae, in fact, filed  
27 suit just over two years after the foreclosure sale occurred. Because Kree fails to show a lack of  
28 diligence by Fannie Mae, its laches defense fails.

1           **C. The Federal Foreclosure Bar**

2           The court finally turns to the issue at the center of the motion: whether the federal  
3 foreclosure bar preempts Nevada law from allowing a nonjudicial foreclosure from extinguishing  
4 Fannie Mae’s interest in the at-issue property.

5           Fannie Mae was placed into the conservatorship of the Agency in 2008. *See* ECF No. 11  
6 at 3; ECF No. 11, Ex. 5; ECF No. 14 at 5. The Agency therefore acquired Fannie Mae’s “rights,  
7 titles, powers, and privileges... with respect to [its] assets.” 12 U.S.C. § 4617(b)(2)(A)(i). Under  
8 the provision known as the federal foreclosure bar, “[n]o property of the Agency shall be subject  
9 to ... foreclosure ... without the consent of the Agency[.]” *Id.* § 4617(j)(3).

10          In *Berezovsky*, the Ninth Circuit held that the federal foreclosure bar “unequivocally  
11 expresses Congress’s ‘clear and manifest’ intent to supersede any contrary law, including state  
12 law, that would allow foreclosure of Agency property without its consent.” 869 F.3d at 930–31.  
13 Thus, the federal foreclosure bar preempts Nevada laws that allow nonjudicial foreclosures to  
14 extinguish the Agency’s property interest without consent. *Id.* at 931.

15          Kree asks the court to ignore the *Berezovsky* decision and to follow state law related to  
16 nonjudicial foreclosures. ECF No. 14 at 5–6. The court declines to do so; the Ninth Circuit’s  
17 *Berezovsky*’s decision is binding on this court. But even if the court were to follow state law  
18 rather than the *Berezovsky* decision, the Nevada Supreme Court recently issued a decision that  
19 comports with *Berezovsky*. In *Saticoy Bay LLC Series 9641 Christine View v. Federal National*  
20 *Mortgage Association*, the Nevada Supreme Court held that the federal foreclosure bar implicitly  
21 preempts Nevada’s nonjudicial-foreclosure statutes that allow a foreclosure sale to extinguish  
22 Agency assets without consent. 417 P.3d 363 (Nev. 2018).

23          Because the nonjudicial foreclosure occurred without the consent of the Agency, the  
24 foreclosure sale could not have extinguished the deed of trust under which Fannie Mae held the  
25 beneficial interests. The court therefore grants summary judgment in favor of Fannie Mae on its  
26 quiet title claim brought under 12 U.S.C. § 4617(j)(3).

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IT IS SO ORDERED.

  
LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE